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FAX MESSAGE

DATE: November 14, 2003

TO: Examiner, Laura M. Schillinger at Group Art Unit 2813

FAX NO.: 703-872-9319

SUBJECT/MESSAGE: Fees for Petition to Revive Application

OUR FILE: MI22-1637

APPLICATION NO: 09/834,660

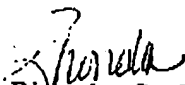
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Dear Laura M. Schillinger:

I submitted this information to John J. Gillon, Jr. on July 23, 2003; this issue has not been resolved yet. I would appreciate your help on this urgent matter.

Our PTO Deposit Account (23-0925) was debited \$1300.00 on March 7, 2003 for Petition to Revive Unintentionally Abandoned Application. A notice from the Office of Petitions was mail on April 17, 2003 stating docket no: MI22-1637 was GRANTED; therefore, the petition fee of \$1300.00 would be credited to Deposit Account 20-0925. Our PTO Account number is 23-0925 NOT 20-0925. I am forwarding the documents for your review. Please let me know if I can be of further assistance in resolving this issue.

Best regards,

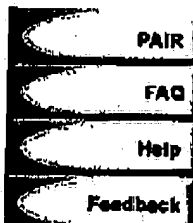
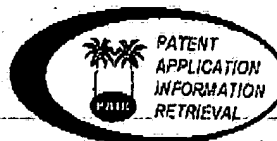

Rhonda G. Rambo
Accounting Department
509-458-2626 X175



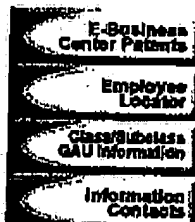
United States Patent and Trademark Office

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PATENT APPLICATION INFORMATION RETRIEVAL



Other Links



Search results for application number:09/834,660			
Application Number:	09/834,660	Customer Number:	-
Filing or 371(c) Date:	04-12-2001	Status:	Final Rejection Mailed
Application Type:	Utility	Status Date:	10-21-2003
Examiner Name:	SCHILLINGER, LAURA M	Location:	TECH CENTER 2800 - CENTRAL FILE CP-4 4C24
Group Art Unit:	2813	Location Date:	10-21-2003
Confirmation Number:	6625	Earliest Publication No:	US 2001-0012664 A1
Attorney Docket Number:	MI22-1637	Earliest Publication Date:	08-09-2001
Class/ Sub-Class:	438/275	Patent Number:	-
First Named Inventor:	Luan Tran, Meridian, ID	Issue Date of Patent:	-
Title Of Invention:	Semiconductor processing methods of forming transistors, semiconductor processing methods of forming dynamic random access memory circuitry, and related integrated circuitry		

Continuity Data

Published Documents

File Contents History		
Number	Date	Contents Description
27	10-21-2003	Mail Final Rejection (PTOL - 326)
26	10-20-2003	Final Rejection
25	02-21-2003	Information Disclosure Statement (IDS) Filed
24	04-17-2003	Petition to Revive Application - <u>Granted</u>
23	01-17-2003	Petition Entered
22	04-17-2003	Petition Decision - Dismissed
21	01-17-2003	Petition Entered
20	04-17-2003	Petition Decision - Dismissed
19	01-17-2003	Petition Entered
18	10-03-2002	Information Disclosure Statement (IDS) Filed
17	08-21-2002	Information Disclosure Statement (IDS) Filed
16	01-22-2003	Date Forwarded to Examiner
15	04-30-2002	Response after Non-Final Action
14	04-30-2002	Information Disclosure Statement (IDS) Filed
13	01-30-2002	Mail Non-Final Rejection
12	01-28-2002	Non-Final Rejection
11	11-06-2001	Case Docketed to Examiner in GAU
10	04-12-2001	Case Docketed to Examiner in GAU
9	07-17-2001	Case Docketed to Examiner in GAU

8	04-12-2001	Preliminary Amendment
7	05-25-2001	Information Disclosure Statement (IDS) Filed
6	04-12-2001	Incoming Letter Pertaining to the Drawings
5	05-07-2001	Case Docketed to Examiner in GAU
4	05-02-2001	Application Dispatched from OIPE
3	04-30-2001	Correspondence Address Change
2	04-28-2001	IFW Scan & PACR Auto Security Review
1	04-12-2001	Initial Exam Team

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Page**Deposit Account Statement**Requested Statement Month: March 2003Deposit Account Number: 230925

Name: WELLS ST JOHN & ROBERTS GREGORY & MATKIN PS

Attention: ATTN BARBARA SCHURRA

Address: 601 WEST FIRST AVENUE SUITE 1300

City: SPOKANE

State: WA

Zip: 99201-3817

DATE	SEQ	POSTING REF TXT	ATTORNEY DOCKET NBR	FEE CODE	AMT	BAL
03/03	1159	78220866		7001	\$335.00	\$14,204.00
03/04	1	10004293	31769.CON.1	1814	\$110.00	\$14,094.00
03/06	5	10338523	MI22-2121	1201	\$84.00	\$14,010.00
03/06	8	10287865	WO30-003	8021	-\$40.00	\$14,050.00
03/06	227	78222021		7001	\$335.00	\$13,715.00
03/07	10	09834660	MI22-1637	1453	\$1,300.00	\$12,415.00
03/07	42	SUBSCRIPTION		8001	\$3.00	\$12,412.00

START BALANCE	SUM OF CHARGES	SUM OF REPLENISH	END BALANCE
\$14,539.00	\$2,167.00	\$40.00	\$12,412.00

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Paper No: 13

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APR 17 2003

OFFICE OF PETITIONS

In re Application of:

Tran

Filed: 21 April, 2001

Application No. 09/834,660

Docket No.: MI22-1637 ←

ON PETITION

This is a decision on the petitions filed herein on 17 January, and resubmitted on March 4 and March 10, 2003, under 37 C.F.R. §1.137(a)¹ and alternatively under 37 C.F.R. §1.137(b)² to revive the above-identified application, and in light of the allegations therein (as well as the express petition) also considered as a request to withdraw the holding of abandonment under 37 C.F.R. §1.181.³

¹ A Petition filed under the provisions of 37 C.F.R. §1.137(a) must be accompanied by:

- (1) The required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application for patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;
- (2) the petition fee required by 37 C.F.R. §1.17(f);
- (3) A showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the reply due date until the filing of a grantable petition pursuant to the is paragraph was unavoidable; and
- (4) Any terminal disclaimer (and fee set forth in 37 C.F.R. §1.20(d)) required pursuant to 37 C.F.R. §1.137(c).

An application is "unavoidably" abandoned only where Petitioner (or Petitioner's counsel) takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, the response is not timely received in the Office. That is, in the context of ordinary human affairs the test is such care as is generally used and observed by prudent and careful persons in relation to their most important business. Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887); Ex parte Hendrich, 1913 Dec. Comm'r Pat. 139, 141 (Comm'r. Pat. 1913).

² Effective December 1, 1997, the provisions of 37 C.F.R. §1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 C.F.R. §1.137(b) a grantable petition filed under the provisions of 37 C.F.R. §1.137(b) must be accompanied by:

- (1) the required reply. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;
- (2) the petition fee as set forth in 37 C.F.R. §1.17(f);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. §1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee set forth in 37 C.F.R. §1.20(d)) required pursuant to 37 C.F.R. §1.137(c). (Emphasis supplied.)

³ The regulations at 37 C.F.R. §1.181 provide, in pertinent part:
§1.181 Petition to the Commissioner.

(a) Petition may be taken to the Commissioner: (1) from any action or requirement of any examiner in the *ex parte* prosecution of an application which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court; (2) in cases in which a statute or the rules specify

Application No. 09/834,660

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The Office regrets the delay in addressing this matter.

For the reasons set forth below, the petition under:

- 37 C.F.R. §1.181 is **GRANTED**;
- 37 C.F.R. §1.137(a) is **DISMISSED as moot**, and
- 37 C.F.R. §1.137(b) is **DISMISSED as moot**.

BACKGROUND

The record indicates that:

- it appeared that applicant failed to reply timely and properly to the non-final Office action mailed on 30 January, 2002, and due (absent extension of time) on or before 30 April, 2002;
- the application was deemed abandoned after midnight 30 April, 2002;
- Notice of Abandonment no was mailed before the filing of the instant petition, however, Petitioner alleges that he contacted the Examiner and learned of the abandonment;⁴
- Petitioner contends as part of his showing that he forwarded via US Postal Service Express Mail a response to the 30 January, 2002, Office action on 30 April, 2002, and supports this allegation with a copy, *inter alia*, of the Express Mail Label No. EV077327446US, his statement (James D. Shaurette (Reg. No. 39,833)) and that of his assistant (Jane E. Boone);

that the matter is to be determined directly by or reviewed by the Commissioner, and (3) To invoke the supervisory authority of the Commissioner in appropriate circumstances. * * *

(b) Any such petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Brief or memoranda, if any, in support thereof should accompany or be embodied in the petition; and where facts are to be proven, the proof in the form of affidavits or declaration (and exhibits, if any) must accompany the petition.

(c) When a petition is taken from an action or requirement of an examiner in the *ex parte* prosecution of an application, it may be required that there have been a proper request for reconsideration (§1.111) and a repeated action by the examiner. The examiner may be directed by the Commissioner to furnish a written statement, within a specified time, setting forth the reasons for his decision upon the matters asserted in the petition, supplying a copy thereof to the petitioner.

(d) Where a fee is required for a petition to the Commissioner the appropriate section of this part will so indicate. If any required fee does not accompany the petition, the petition will be dismissed. * * *

(f) Except as otherwise provided in these rules, any such petition not filed within 2 months from the action complained of, may be dismissed as un timely. The mere filing of a petition will not stay the period for reply to an Examiner's action which may be running against an application, nor act as a stay of other proceedings. * * *

⁴ Petitioner's statement dates this contact as "January 7, 2002," however this apparently is a typographical error and is intended to be January 7, 2003, and is so interpreted. If this interpretation is incorrect, Petitioner must notify the Office.

Application No. 09/834.660

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- a review of Office record clearly indicates that the reply referenced by Petitioner indeed was filed herein on 30 April, 2002;
- contemporaneously with the filing of the instant petition (with fee(s)), Petitioner submitted a copy of the referenced reply.

The courts have determined the construct for properly supporting a petition seeking withdrawal of a holding of abandonment.⁵

CONCLUSION

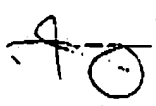
Accordingly, the petition to:

- to withdraw the holding of abandonment as considered under 37 C.F.R. §1.181 hereby is granted;
- revive as to unavoidable delay under 37 C.F.R. §1.137(a) is dismissed as moot; and
- revive as to unavoidable delay under 37 C.F.R. §1.137(b) is dismissed as moot.

The petition fee is waived and the fee (previously charged (\$1,300.00) is credited to Deposit Account 20-0925, as previously authorized.

The instant application is being forwarded to Technology Center 2800 for further processing.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.


John J. Gillon, Jr.
Senior Attorney
Office of Petitions

Correct Account # 23-0925.

⁵ See: DeMar v. Schultze, 172 USPQ 513 (D.D.C. 1971).